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JUL 28 2006

OFFICE OF PETITIONS

In re Application of :  
Colten : DECISION ON PETITION  
Application No. 10/755,021 :  
Filed: January 8, 2004 :  
Atty. Dkt. No.: 33296-PA :

This decision is in response to the petition under 37 CFR 1.181 to withdraw the holding of abandonment and the petition under 37 CFR 1.182 for expedited decision rendering, filed May 22, 2006.

The petition under 37 CFR 1.182 for expedited rendering of decision is hereby **GRANTED**.

The petition under 37 CFR 1.181 for withdrawal of the holding of abandonment is hereby **DISMISSED**.

This application became abandoned February 2, 2006 for failure to timely file a proper response to the Notice of Allowance and Notice of Allowability (Notices) mailed November 1, 2005. The Notices set a three month shortened statutory period for reply. Notice of Abandonment was mailed March 28, 2006.

Petitioner argues that the Notices were not received.

In the absence of any irregularity in the mailing of the Office communications, there is a strong presumption that the Office communications were properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office

communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

In support of the petition, petitioner has provided a statement from practitioner that a search of the docket record and file jacket indicated that the Office communication was not received. However, the copy of the docket record submitted does not appear to reflect a period of time where the Office communication would have been entered had it been received. Instead, the time period reflected on the copy of the docket record appears to reflect the time period that a reply to the Notices would likely have been submitted rather than the time period of receipt of the Notices.

Any renewed petition should be accompanied by evidence to establish non-receipt of the Office communications, in particular, a copy of a docket record where the Office communication would have been entered had it been received.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

**Mail Stop Petition**

Commissioner for Patents  
P.O. Box 1450  
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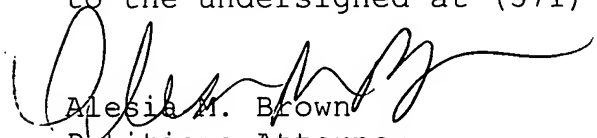
By facsimile:

(571) 273-8300

By hand delivery:

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Customer Window, **Mail Stop Petition**  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3205.



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Office of Petitions